



CASE CONFERENCES IN THE FAMILY COURT

A summary guide for lawyers

1. BACKGROUND

Case conferences are part of the Future Directions Committee initiatives introduced by the Family Court over the last 6 months in an effort to improve its client services and Court procedures.

The current case conference model has evolved over a period of three to four years and is attributable to the work of the Parramatta registry and the local profession who were responsible for trialling and subsequently introducing case conferences as part of the Court's case management.

Case conferences are part of an overall approach by the Court in improving how the Court conducts its business and delivers its services to clients.

Other initiatives introduced with the case conference procedures to improve client service are:

1. the introduction of two streamlined services known as the 'client service team'¹ and the 'caseflow team'²; and
2. the relocation of Deputy Registrars and Court Counsellors to work in close proximity with the caseflow team (known as the Primary Dispute Resolution team).

2. THE OBJECTIVES OF CASE CONFERENCES

The objectives are very specific:

1. To identify those issues which are issues for parties.
2. For the parties and their lawyers to address the issues with the assistance of appropriate primary dispute resolution staff of the Court.

¹ This team deals with all enquiries before and up to the filing of the first Court application

² This team deals with all cases from the first return date to final trial

3. To assist the parties in understanding the Court process and help prepare them for further dispute resolution processes.
4. To involve the parties and their lawyers in an early assessment of the issues and to facilitate negotiations.
5. To identify any special needs/urgency in a case and to tailor case management procedures to the case.
6. To reduce the number of Court events and attendances by parties and their lawyers at the Court.

3. THE MODEL AND STAGES OF CASE CONFERENCES

Cases involving financial issues are set down for a case conference before a Deputy Registrar of the Court whilst cases involving only child issues are set down before a Counsellor of the Court.

Cases involving both financial and child issues are run jointly before a Deputy Registrar and a Counsellor.

Case conferences are fixed by the client service staff at each filing registry.

Appointments are listed within approximately 8-10 weeks of the filing of an application seeking final orders in either property, child issues or both.

The case conference is in lieu of, and replaces, the two existing Court attendances – the pre- directions privileged counselling appointment and the first directions hearing date. It is therefore important in cases where a party is legally represented that their lawyer attend the case conference with the client.

In some registries, in those matters where an interim application is sought in the identical terms as the final orders in the application without a request for an abridgement, a case conference appointment is given in lieu of a Court hearing date.

To be effective the case conference must be a timely event for the parties and the Court. In essence, that requires the early service of documents and preparation of material.

The applicant should effect service as soon as possible after the filing of the application to allow the respondent adequate time in which to prepare and file their response.

Lawyers and parties should bring with them to the case conference any necessary documentation that will assist in the negotiation process and in identifying or clarifying the facts and issues.

4. CASE CONFERENCE STAGES

There are 5 stages to the case conference as set out below.

Stage	Name	Who attends	Time
1	Information Session	Prior to the Case Conference attended by the parties only	30 mins
CONFIDENTIAL PROCESS – COVERED BY S62F(2)/19N EXCEPT IF THERE IS A DISCLOSURE OF CHILD ABUSE			
2	Assessment	Applicant and lawyer	10 mins
		Respondent and lawyer	10 mins
3	Negotiation	Both parties with or without lawyers Joint or separate sessions	30 mins
4	Summary of Issues and Recommendations	With parties and lawyers	10 mins
5	Directions Hearing	Not confidential	10/15 mins

At the end of each case conference the chairperson, either a Counsellor or Deputy Registrar, prepares a Memorandum of Case Conference (Form 69A) which is handed to each party and placed on the file.

A Directions Hearing is then conducted at the end of each case conference by a Deputy Registrar in chambers with all parties and their lawyers present.

Orders that are made can be final or interim consent orders or further directions for the future listing of the matter either to an interim hearing or dispute resolution conference pursuant to the recommendations set out in the Form 69A.

5. SUITABILITY FOR CASE CONFERENCE

There are a number of cases deemed inappropriate to list to a case conference. Those cases are allocated a date in the Deputy Registrar Directions Hearing List. The matters not allocated to a case conference include:

1. Transfers from local courts
 2. Personal protection order in existence without the usual exclusion clause to allow parties to attend Court events
 3. Family violence factors evident
 4. One of the parties is in prison or overseas
 5. Application is sought to be listed at a directions hearing at request of parties/lawyers
 6. The case cannot be allocated a case conference within 10 weeks of filing.
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6. HOW IT WORKS – THE BIG DAY OUT

Following the model as set out above the case conference follows the 5 stage process.

1. The information session prepares the clients for the coming events and familiarises them with the Court processes.
2. The individual assessment process allows each party to express their views, identify and prioritise the issues and meet the Court representative conducting the case conference. These sessions are conducted with the lawyers being present which previously in child matters and pre directions counselling did not occur. They also allow for the parties to be given an introduction and outline of the session with emphasis on the confidential nature of the conference. It allows the Court representative to assess the issues and readiness of the parties to negotiate.
3. The negotiation period allows frank discussions with all parties being present. This could result in the case being resolved that day or allow for further negotiations at a later follow up stage either with or without the Court experts. It also allows the Court representative to conduct an early reality check on the parties' expectations, in the presence of their lawyers, which assists in the preparation of the case for the next event whether it be privileged counselling or an Order 24 conference on financial issues. In some cases, this is also the first opportunity that the lawyers have had to hear the other side's case and the issues relevant to them in an informal negotiation process.
4. The summary stage is both a summary of negotiations and the recommendations coming out of the case conference. This is when the Form 69A Memorandum of Case Conference is completed and all parties, the lawyers and the Court representative look at the next best Court event relevant to the case. A copy of the Form 69A is given to all parties and a copy is also placed on the Court file. The Form 69A is not a confidential document and is able to be referred to in future Court events.
5. The final event, which is not confidential, is the formal directions hearing which is conducted by a Deputy Registrar in chambers with the parties, their lawyers and the Counsellor present. Directions are made in the usual manner to case manage the file to a meaningful next event.

The differences between the case conference directions hearing and the Court directions hearing are:

- (a) case conferences are conducted in the less formal environment of a conference room setting;
 - (b) a Counsellor is present;
 - (c) case conferences offer a greater opportunity of future appointments being made with an appropriate person and where practicable with the same Counsellor or Deputy Registrar who conducted the case conference;
 - (d) clients perceive the directions hearing as a meaningful event connected to the case conference and tailored to meet the needs of their case and issues; and
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- (e) all parties are better prepared for the next event from the information exchanged at the case conference and can tailor the Court orders appropriately.

7. THE DO AND DON'T LISTS ON CASE CONFERENCES

1. The Do list:

- (a) Lawyers handling the file should attend the case conference wherever possible as they have the greatest rapport with their client and know the background information to the case intimately.
- (b) Lawyers, particularly where they are not handling the file or are acting as an agent or counsel, should meet the client before they enter the first event, the information session, to check their instructions and introduce themselves.
- (c) Applicants should ensure service of their documents as soon as possible after the issue of the same. This allows the respondent ample time to file a response, also in a timely manner so all parties are ready for the case conference. If a response is not filed then at least the papers should be ready for filing on the day of the case conference.
- (d) Lawyers should talk to each other before the case conference or whilst their clients are in the information session. Case conferences are a time-managed event and in many cases time is not available for private negotiations between the lawyers.

2. The Don't list:

- (a) There are no automatic administrative adjournments on a case conference. Each request for an adjournment needs to set out in detail the reasons for the adjournment and must be approved by a Deputy Registrar. Generally adjournments are not granted if the reason for seeking the adjournment is that the response is not filed or for parties to negotiate. The case conference process allows these factors to be dealt with in one of the five stages. Case conferences if adjourned are adjourned to a directions hearing list. Due to resource issues it is not always open to a registry to adjourn to another case conference appointment.
 - (b) Lawyers should not double brief or have more than one Court appearance at the time of the case conference. Apart from the first 10 minutes the lawyer's attendance is required at all times at the case conference.
 - (c) Lawyers must attend the case conference with their clients as the directions hearing is included as part of the process. Clients should not be sent on their own to the case conference as this could result in costs orders being made against a party.
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8. ADVANTAGES TO THE COURT

Case conferences:

1. are a timely use of Court resources;
2. identify cases needing special or expeditious case management at an early stage of proceedings; and
3. allow for early resolution of the case at the first Court event.

9. ADVANTAGES TO THE CLIENT AND LAWYER

Case conferences allow:

1. issues to be identified at the first Court event in the presence of all parties;
2. lawyers to be present at the early stages of assessment and negotiations in child welfare cases;
3. an easier process for self represented litigants to follow;
4. an easier process for the represented party where the other party is self represented in the preparation of future events;
5. the Court representatives to conduct an early reality check on the issues in dispute and advise/prepare the unrepresented party on Court procedure and practice in a manner tailored to their issues and future Court events; and
6. three events in one means cost savings for the represented party and is more timely for both parties.

Case conferences are the new way the Court conducts its business however to be effective the Court and the lawyers must work together to make case conferences a meaningful event for the parties.

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